



CITY OF SAN JOSÉ, CALIFORNIA

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, OCTOBER 4, 2005

The Council of the City of San José convened in regular session at 9:30 a.m. in the Mayor's Conference Room T1841, at City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, LeZotte, Nguyen, Pyle, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:31 a.m. to a Closed Session in Room T1841, (A) to confer with Legal Counsel with respect to existing litigation pursuant to Government Code Section 54956.9 Subsection (a) to consider the case(s) of (1) City of San José, et al. v. County of Santa Clara, et al.; (2) McAndrew v. City of San José, et al.; (3) County of Santa Clara v. City of San José, et al.; (4) City of Milpitas v. City of San José, et al.; (5) City of Santa Clara v. City of San José, et al. (B) to confer with Legal Counsel with respect to initiation of litigation pursuant to Government Code Section 54956.9 Subsection (c) in one (1) matter of anticipated litigation. (C) Conference with Labor Negotiator pursuant to Government Code Section 54957.6, City Negotiator: City Manager designee Alex Gurza, and the following Employee Organizations: (1) San José Police Officers' Association; (2) International Association of Firefighters.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:15 a.m. and reconvened at 1:31 p.m. in the Council Chambers.

Present: Council Members - Campos, Chavez, Chirco, Cortese, LeZotte, Nguyen, Pyle, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

INVOCATION

Reverend Bob Kilpatrick, Cambrian Park Church of the Nazarene. (District 9)

PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance

ORDERS OF THE DAY

Upon motion by Vice Mayor Chavez, seconded by Council Member Pyle and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (11-0)

CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to Father Gerald T. Wade on the occasion of his Jubilee Year in recognition of his outstanding service to the citizens of San José and the Bellarmine College Preparatory community. (Yeager)**

Action: Mayor Gonzales and Council Member Yeager recognized and commended Father Gerald T. Wade for his dedicated service and outstanding contributions to the community.

- 1.3 Presentation of a proclamation proclaiming October 9-15, 2005 as “Fire Prevention Week”. (Fire)**

Action: Mayor Gonzales declared October 9 through 15, 2005 as “Fire Prevention Week” in the City of San José. Fire Chief Jeffrey Clet accepted the plaque.

- 1.4 Presentation of commendations for the City Team who assisted with the success of the San José Grand Prix. (Mayor)**

Action: Mayor Gonzales, Vice Mayor Chavez and Council Members Campos, Cortese and LeZotte recognized and commended all of the employees that assisted with the success of the San José Grand Prix.

- 1.5 Presentation of a proclamation in honor of Employment of Persons with Disabilities Awareness Month, “Workers with Disabilities: Ready for Tomorrow’s Jobs Today”. (LeZotte)
(Rules Committee referral 9/28/05)**

Action: Mayor Gonzales and Council Member LeZotte presented a proclamation in honor of “Employment of Persons with Disabilities Awareness Month” to Mr. Aaron Morrow, Chair of the Disability Advisory Commission.

- 1.7 Presentation of a commendation honoring Leigh Weimers, columnist for the San José Mercury News, for his outstanding career in journalism and extensive community involvement. (Chavez)**

Action: Deferred to October 18, 2005.

1.8 Presentation of a proclamation, declaring October 10, 2005, as PG&E Day, celebrating 100 years of excellence to the people and businesses of our community. (Chavez)

Action: Mayor Gonzales and Vice Mayor Chavez declared October 10, 2005 as “PG&E Day” in celebration of its centennial anniversary.

CONSENT CALENDAR

Upon motion by Council Member Williams, seconded by Vice Mayor Chavez, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0.)

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 27548 – Granting a commercial solid waste and recyclables collection franchise to Pacific Coast Recycling Inc.**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on September 27, 2005, submitted by the City Clerk.

Action: Ordinance No. 27548 was adopted. (11-0)

- (b) **ORD. NO. 27550 – Rezoning certain real property situated on the east side of South 10th Street, approximately 150 feet south of San Salvador Street (422 South 10th Street) to A(PD) Planned Development Zoning District. PDC05-025**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on September 27, 2005, submitted by the City Clerk.

Action: Ordinance No. 27550 was adopted. (11-0)

- (c) **ORD. NO. 27551 – Rezoning certain real property situated west side of South 9th Street approximately 90 feet southerly of East William Street (525 S. 9th Street) to A(PD) Planned Development Zoning District. PDC05-020**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on September 27, 2005, submitted by the City Clerk.

Action: Ordinance No. 27551 was adopted. (11-0)

- 2.2 (d) **ORD. NO. 27552 – Rezoning certain real property situated on the southwest corner of Rock Avenue and Oakland Road (Lot 57, Tract 9618) to A(PD) Planned Development Zoning District. PDC05-085**

Documents Filed: (1) Letter from Balch Enterprises Inc., dated September 20, 2005, regarding the zoning change at Rock Avenue and Oakland Road. (2) Proof of Publication of Notice of Public Hearing, executed on September 27, 2005, submitted by the City Clerk.

Action: Ordinance No. 27552 was adopted. (11-0)

- (e) **ORD. NO. 27554 – Amends Section 4.24.010 of Chapter 4.24 of Title 4 of the San José Municipal Code to authorize the City Attorney to compromise and settle claims related to sanitary sewer backup intrusions in which the amount to be paid by the City does not exceed twenty-five thousand dollars (\$25,000).**

Action: Ordinance was not adopted. Will be heard October 18, 2005.

- (f) **ORD. NO. 27562 – Establishes Combination Rule 20A/In-Lieu Fee (Rules 20B) Underground Utility District on Taylor Street from First Street to Tenth Street; Jackson Street from Seventh Street to Ninth Street; Seventh Street from Jackson Street to Taylor Street; and Sixth Street from Taylor Street to Empire Street.**

Action: Ordinance was not adopted. Will be heard October 18, 2005.

- 2.3 **Acceptance of the Office of the City Auditor's *Report of Activities and Findings for the Period July 16 through August 15, 2005.* (City Auditor)
(Rules Committee referral 9/21/05)**

Documents Filed: Report of Activities and Findings for the Period July 16 through August 15, 2005 from the Office of the City Auditor.

Action: The report was accepted. (11-0)

- 2.4 **Acceptance of the finding reports from Kafoury, Armstrong & Company, LLP for the quarter ending June 30, 2005 relating to the Bay 101 Conditional Approval of Stock Transfer. (City Auditor)
(Rules Committee referral 9/21/05)**

Documents Filed: Memorandum from City Auditor Gerald Silva, dated September 14, 2005, transmitting the reports from Kafoury, Armstrong & Company, LLP.

Action: The reports were accepted. (11-0)

2.5 Approval of the installation of an exterior automated teller machine (ATM) affixed to the HP Pavilion at San José. CEQA: Exempt, File No. PP05-174. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development Paul Krutko, dated September 14, 2005, recommending approval to proceed with the installation of an exterior ATM.

Action: The installation was approved. (11-0)

2.6 Adoption of a resolution approving revisions to policies and guidelines, for the Operating Grant Arts Program administered by the Office of Cultural Affairs, in order to streamline eligibility requirements and the grant review and recommendation process, and to provide for the ongoing implementation of multi-year applications. CEQA: Not a Project. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development Paul Krutko, dated September 14, 2005, recommending adoption of a resolution.

Action: Resolution No. 72917, entitled: “A Resolution of the Council of the City of San José Approving Revisions to Policies and Guidelines for the Operating grants Arts Program”, was adopted. (11-0)

2.7 Adoption of a resolution authorizing the City Manager to:

- (a) Negotiate and execute an agreement with Block 3 Development Partners LLC, assignee of CIM California Urban RE Fund LGP, LLC (“Developer”), in an amount not to exceed \$122,104 for the City’s Office of Cultural Affairs to administer a public art project at Block Three, Phase 1 in downtown San José; and**
 - (b) Negotiate and execute an amendment to the agreement between Developer and City to reflect an increase in the public art budget allocated to Phase 1 of Block Three, if the total estimated budget for the Block Three, Phase 1 Project shows an increase of more than 10% at the design development stage.**
- CEQA: EIR Resolution No. 71039.1. Council District 3. (Economic Development)**

Action: Deferred to October 18, 2005.

2.8 Approval of use of the HP Pavilion at San José for a Community Event date, at a funding level that is not to exceed \$20,000 for the San José Sports Hall of Fame Induction Ceremony on November 3, 2005. CEQA: Not a Project. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development Paul Krutko, dated September 19, 2005, recommending approval for the event.

Action: The use of the HP Pavilion at San José for a Community Event date was approved. (11-0)

- 2.9 Adoption of a resolution authorizing the City Manager to negotiate and execute the following group dental agreements for the period January 1, 2006 through December 31, 2010:**
- (a) Delta Dental as the TPA (third-party administrator) and PPO (preferred provider organization) provider for the dental indemnity plan.**
 - (b) Delta Dental's DeltaCare product, a dental HMO (Health maintenance Organization), to replace the DBP Dental Benefit Providers) plan.**
- CEQA: Not a Project. (Employee Services)**

Documents Filed: Memorandum from Director Employee Services Mark Danaj, dated September 21, 2005, recommending adoption of a resolution.

Action: Resolution No. 72918, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Agreements with Delta Dental for Dental Insurance for the Period from January 1, 2006, through December 31, 2010", was adopted. (11-0)

- 2.10 Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 2005-2006 #4 and authorization for the Director of Finance to execute the purchase orders. CEQA: See memo for CEQA designation(s). (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated September 14, 2005, recommending approval of award of open purchase orders.

Action: The open purchase orders for FY 2005-2006 #4 was approved. (11-0)

- 2.11 Adoption of a resolution directing the City Clerk to execute and record at the Office of the County Recorder, a Quitclaim Deed restoring pedestrian and vehicle access rights on Curtner Avenue and Little Orchard Street to General Electric Company. CEQA: Not a Project. Council District 7. (General Services)**

Documents Filed: Memorandum from Interim Director of General Services Peter Jensen, dated September 14, 2005, recommending adoption of a resolution.

Action: Resolution No. 72919, entitled: "A Resolution of the Council of the City of San José Authorizing the City Clerk to Execute and Record at the Office of the County Recorder a Quitclaim Deed Restoring Pedestrian and Vehicle Access Rights on Curtner Avenue and Little Orchard Street", was adopted. (11-0)

- 2.12 Adoption of a resolution declaring a 3,277 square foot portion of City-owned land located at the Northeast corner of Capitol Avenue and Rose Avenue as:**
- (a) Surplus to the needs of the City;**
 - (b) Authorizing its sale to Amrik Singh Pawar for \$75,000; and**
 - (c) Delegating authority to the Director of General Services to execute all documents necessary to complete the transfer of the property.**
- CEQA: Exempt, File No. PP99-117. Council District 5. SNI: East Valley – 680 Communities. (General Services)**

2.12 (Cont'd.)

Documents Filed: Memorandum from Interim Director of General Services Peter Jensen, dated September 14, 2005, recommending adoption of a resolution.

Action: Resolution No. 72920, entitled: "A Resolution of the Council of the City of San José Declaring Certain City Owned Property Surplus and Authorizing the Director of General Services to Execute an Agreement to Sell and All Necessary Documents Necessary for the Transfer of Such Property, to the Adjacent Property Owner, Amrik Singh Pawar for a Sum of Not Less Than \$75,000.00", was adopted. (11-0)

2.13 Approval of an agreement with United Way Silicon Valley for use of software for City Employee Giving Campaign and authorize the Library Director to serve as the coordinator of the City Employee Giving Campaign. CEQA: Not a Project. (Library)

Documents Filed: Memorandum from Library Director Jane Light, dated September 26, 2005, recommending approval of the agreement.

Action: The agreement was approved. (11-0)

2.14 Adoption of a resolution ordering the reorganization of territory designated as Capitol No. 52 which involves the annexation to the City of San José of 0.32 acres of land more or less, located at the on the northwest corner of Wilbur Avenue and Nancy Lane and adjacent to the City of San José annexation Capitol No. 42-A and the detachment of the same from Central Fire Protection, Area No. 01 (Library Services) County Services, County Lighting Services, and Sanitation District 2-3. Council District 5. CEQA: Resolution No. 65459, File No. C05-023. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated September 19, 2005, recommending adoption of a resolution.

Action: Resolution No. 72921, entitled: "A Resolution of the Council of the City of San José Ordering the Reorganization of Certain Uninhabited Territory Designated as Capital No. 52 Subject to Liability for General Indebtedness of the City", was adopted. (11-0)

2.15 Adoption of a resolution ordering the reorganization of territory designated as Penitencia No. 72 which involves the annexation to the City of San José of 0.84 acres of land more or less, located at the on the west side of Toyon Avenue, approximately 370 feet south of Selby Lane, and adjacent to the City of San José annexation Penitencia No. 1-B and the detachment of the same from County Lighting County Services, Central Fire Protection, Area No. 01 (Library Services) County Services and Sanitation District 2-3. Council District 5. CEQA: Resolution No. 65459, File No. C05-024. (Planning, Building and Code Enforcement)

2.15 (Cont'd.)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated September 19, 2005, recommending adoption of a resolution.

Action: Resolution No. 72922 entitled: "A Resolution of the Council of the City of San José Ordering the Reorganization of Certain Uninhabited Territory Designated as Penitencia No. 72, Subject to Liability for General Indebtedness of the City", was adopted. (11-0)

2.16 (a) Adoption of a resolution:

(1) **Authorizing the City Attorney to execute an agreement with Hanson, Bridgett, Marcus, Vlahos, Rudy LLP to provide legal and investigative services as the Evaluator to the San Jose Elections Commission for a two-year term beginning on July 1, 2005 and extending through June 30, 2007, in an amount not to exceed \$100,000.**

(2) **Authorizing the City Clerk to execute an agreement with Roberto A. Rivera dba Rivera & Associates to provide investigation services to the San Jose Elections Commission for a term beginning September 26, 2005 and extending through June 30, 2007, in an amount not to exceed \$10,000.**

(b) **Adoption of the following appropriation ordinance amendments in the General Fund:**

(1) **Increase the Campaign Finance Review/Ethics City-Wide appropriation by \$110,000.**

(2) **Decrease the Contingency Reserve by \$110,000.**

**CEQA: Not a Project. (City Attorney's Office/City Clerk/City Manager's Office)
(Rules Committee referral 9/28/05)**

Documents Filed: Memorandum from City Attorney Richard Doyle, City Clerk Lee Price, and Budget Director Larry Lisenbee, dated September 29, 2005, recommending adoption of a resolution and appropriation ordinance amendments.

Council Member Reed pulled this item for brief questions. City Clerk Lee Price provided additional details about the contract with the investigation.

Action: Upon motion by Council Member Reed, seconded by Council Member Williams and carried unanimously, Resolution No. 72923, entitled: "A Resolution of the Council of the City of San José Authorizing the City Attorney and the City Clerk to Execute Agreements for Evaluator and Investigator Services for the Elections Commission", and Ordinance No. 27563, entitled: "An Ordinance of the City of San José Amending Ordinance 27474 to Appropriate Monies in the General Fund for Campaign Finance Review/Ethics City Wide; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (11-0)

**2.17 Adoption of a resolution in support of SB 962 (Chesbro), AB 1378 (Lieber), and AB 609 (Lieber), which relates to the impending closure of Agnews Developmental Center. (Chavez/LeZotte)
(Rules Committee referral 9/28/05)**

Documents Filed: Memorandum from Director Intergovernmental Relations Betsy Shotwell, dated October 3, 2005, recommending adoption of a resolution.

Council Member LeZotte pulled this item to speak in favor.

Action: Upon motion by Council Member LeZotte, seconded by Council Member Reed and carried unanimously, Resolution No. 72924, entitled: "A Resolution of the Council of the City of San José Supporting SB962 (Chesbro), AB1378 (Lieber) and AB609 (Lieber) Relating to the Impending Closure of Agnews Developmental Center", was adopted, with Staff directed to immediately process and forward the resolution to legislative representatives. (11-0)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

**3.2 Report of the Rules Committee – September 21, 2005
Vice Mayor Chavez, Chair**

Documents Filed: The Rules/Partial Rules Committee Reports dated September 21, 2005, and September 28, 2005.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
 - (1) Review October 4, 2005 City Council Agenda
The Committee recommended approval of the October 4, 2005 City Council Agenda with 3 additions.
 - (2) Add New Items to September 27, 2005 Agenda

The Committee recommended approval of the September 27, 2005 City Council Agenda with four additions and that the request for a Special Personnel Review of the City Manager return to the Rules Committee in two weeks for a formal recommendation.
 - (3) List of Reports Outstanding. Attachment: Report from the City Manager dated April 5, 2005, transmitting reports outstanding for April 12, 2005.

The Committee noted and filed the City Manager's Report.

3.2 Report of the Rules Committee – September 21, 2005 (Cont'd.) Vice Mayor Chavez, Chair

- (c) Legislative Update
 - (1) State - There was no report.
 - (2) Federal - There was no report.
- (d) Meeting Schedules - There were none.
- (e) The Public Record. Attachment: Memorandum from City Clerk Lee Price, dated September 15, 2005, transmitting items for public record for the period of September 7-13, 2005.

The Committee noted and filed the Public Record.

- (f) Appointments to Boards, Commissions and Committees
 - (1) Summary of Commission Vacancies

The Committee noted and filed the City Clerk's Report.

- (2) Reinstate Commissioner Brenda Jackson to serve the remainder of her term on the Small Business Development Commission. Attachment: Memorandum from Director of Economic Development Paul Krutko, dated September 15, 2005, recommending reinstatement of Ms. Jackson.

The Committee recommended reinstating Commissioner Brenda Jackson to serve the remainder of her term on the Small Business Development Commission.

- (g) Rules Committee Reviews, Recommendations and Approvals
 - (1) Workload Assessment for Creating a Meghan's Law Taskforce. Attachment: Memorandum from Director Intergovernmental Relations Betsy Shotwell, dated September 20, 2005, recommending acceptance of the workload assessment.

The Committee recommended accepting the workload assessment for the creation of a Meghan's Law Taskforce with the addition of representatives from the Probation Department and the Domestic Violence Taskforce to the taskforce membership list.

- (2) City Council Initiated Rezoning of Parcels within the Garden Alameda Neighborhood from R2, CO and CN to R-1
The Committee recommended that the item be forwarded to the City Council to direct Staff to initiate the requested rezoning.

**3.2 Report of the Rules Committee – September 21, 2005 (Cont'd.)
Vice Mayor Chavez, Chair**

- (h) Oral Communications - There were none presented.
- (i) Adjournment - The meeting was adjourned at 3:05 p.m.

**Report of the Rules Committee (Partial) – September 28, 2005
Vice Mayor Chavez, Chair**

- (c) Legislative Update
 - (1) State
 - (a) Approval of the 2005 League of California Cities Resolutions.
The Committee approved the recommended positions for Resolutions 1-7. Attachment: (1) Memorandum from Director Intergovernmental Relations Betsy Shotwell, dated September 23, 2005, recommending approval of the City position. (2) Supplemental memorandum from Director Intergovernmental Relations Betsy Shotwell, dated October 3, 2005, transmitting additional information.

The Committee recommended a support-in-concept position for Resolution 8 relating to Broadband Internet Access and requested that City Representatives to League Policy and Resolution Committees at the conference seek the addition of another “whereas” clause that would emphasize the need for a long term framework to ensure equal access to the Internet.

Action: Upon motion by Council Member Reed, seconded by Council Member Pyle and carried unanimously, the Reports of the Rules/Partial Rules Committee and the actions of September 21, 2005 and September 28, 2005, were approved. (11-0)

**3.4 Adoption of a resolution declaring results of the September 13, 2005 Special Run-Off Municipal Election pursuant to Elections Code Section 15400. The resolution will certify the results of the election and confirm the election of Madison P. Nguyen to fill the unexpired vacancy in the Office of Council Member – District 7. (City Clerk)
(Rules Committee referral 9/28/05)**

Documents Filed: Memorandum from City Clerk Lee Price, dated September 29, 2005, recommending adoption of a resolution.

3.4 (Cont'd.)

Action: Upon motion by Council Member Reed, seconded by Council Member LeZotte and carried unanimously, Resolution No. 72925, entitled: "A Resolution of the Council of the City of San José Reciting that a Special Municipal Election was Held in the City of San José on Tuesday, September 13, 2005; Stating the Office to be Filled at the Election; Finding and Declaring that the Registrar of Voters of the County of Santa Clara has Canvassed the Returns of the Election, and Confirming the Results of the Canvass; Stating the Whole Number of Votes Cast, the Name of the Person Voted For, the Number of Votes Given at Each Precinct to Each Person; Finding and Declaring that Madison P. Nguyen Received the Highest Number of Votes of the Votes Cast in District 7", was adopted. (11-0)

3.5 Adoption of a resolution setting population figures to calculate the Voluntary Expenditure Limits for the 2006 Municipal Election Cycle. (City Clerk) (Rules Committee referral 9/28/05)

Documents Filed: Memorandum from City Clerk Lee Price, dated September 30, 2005, recommending adoption of a resolution.

City Clerk Lee Price responded to brief questions. Council Member Reed noted that the Elections Commission recommended to the Blue Ribbon Task Force late last year that Council should consider raising the expenditure limits for the 2008 election.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Reed and carried unanimously, Resolution No. 72926, entitled: "A Resolution of the Council of the City of San José Setting Population Limits for Purposes of Calculating the Voluntary Expenditure Limits for the 2006 Municipal Election Cycle", was adopted. (11-0)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Report of the Building Strong Neighborhoods Committee – September 19, 2005 Council Member Chirco, Chair

Documents Filed: The Building Strong Neighborhoods Committee Report dated September 19, 2005.

- (a) Discussion of the Neighborhood Development Center (NDC) Deployment Progress and Desired Outcomes. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated September 7, 2005, transmitting the report.

The Committee accepted the Staff Report.

**4.1 Report of the Building Strong Neighborhoods Committee – September 19, 2005
Council Member Chirco, Chair (Cont'd.)**

- (b) Report on Strong Neighborhoods Partnerships with San José State University Foundations, Non-Profit Organizations and Corporations. Attachment: Memorandum from Assistant City Manager Mark Linder, dated September 9, 2005, transmitting the report.

The Committee accepted the Staff Report. Staff will return to the Committee with an update.

- (c) San José Prepared! Outcomes and Work Plan Development

The Committee accepted the Staff Report. Council Offices will designate a Staff lead person to work with Dr. Stevens to set up a hub in each Council District.

- (d) Animal Care Center Status Report and Policy Barriers

Deferred to November 21, 2005.

- (e) Secondary Units Pilot Program Implementation Steps and Community Outreach. Attachment: Memorandum from Director of Housing Leslye Corsiglia and Director of Planning, Building and Code Enforcement Stephen Haase, dated September 13, 2005, transmitting the report.

The Committee approved to defer this item to the October 17, 2005 Committee Agenda.

- (f) Oral Petitions - There were none presented.

- (g) Adjournment - The meeting was adjourned at 2:45 p.m.

Action: Upon motion by Council Member Chirco, seconded by Vice Mayor Chavez and carried unanimously, the Report of the Building Strong Neighborhoods Committee and the actions of September 19, 2005, were accepted. (11-0)

- 4.4 (a) **Report on the criteria for use of consultants for plan review and engineering peer review services associated with the building permit process.**
- (b) **Adoption of a resolution authorizing the City Manager to execute a fourth amendment to the agreements for plan check services as follows:**
- (1) **Increasing maximum compensation by \$50,000 for 5 agreements to the following amounts:**
- (a) **The Phillips Group by \$5,000 from \$50,000 to \$55,000.**
- (b) **Kutzmann & Associates by \$5,000 from \$129,000 to \$134,000.**
- (c) **Linhart, Petersen, Powers Associates by \$30,000 from \$141,000 to \$171,000.**
- (d) **R.K. Associates by \$5,000 from \$15,000 to \$20,000.**
- (e) **Esgil Corporation by \$5,000 from \$105,000 to \$110,000.**
- (2) **Extending the terms of the agreements by four months from October 1, 2005 to January 31, 2006;**
- (c) **Authorization for the beginning of a process to identify and review qualifications of outside consultants for plan review and engineering peer review professional services and develop a procurement strategy.**

CEQA: Not a Project. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated September 23, 2005, recommending approval of the report, adoption of a resolution and approval of a process to identify and review qualification of outside consultants.

Public Comment: Adam Strempe, Ray Simpson, Nancy Ostrowski and Olivier Baviere, Local 21, spoke in opposition of the Staff recommendation.

Director of Planning, Building and Code Enforcement Stephen Haase responded to Council questions.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Chirco and carried unanimously, the report was accepted, Resolution No. 72927, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute Fourth Amendments to the Agreements for Plan Check Consultants", was adopted, and authorization for the beginning of a process to identify and review qualifications of outside consultants for plan review and engineering peer review professional services and develop a procurement strategy was approved, with Staff directed to move forward with the contracts and return in 6 months with a status report on the work load study. (11-0)

NEIGHBORHOOD SERVICES

- 5.2**
- (a)** Acceptance of the report conducted by consultants Aquatic Design Group Incorporated regarding the assessment of City pools.
 - (b)** Approval to keep the (4) pools: Mayfair, Ryland, Biebrach, and Alviso closed, and to defer additional investment in existing pools pending the completion of the proposed strategic planning process.
 - (c)** Adoption of a resolution authorizing the City Manager to negotiate and execute one or more consultant agreements to conduct a strategic planning process for its Aquatics program, in an amount not to exceed \$250,000, that would include a community outreach process to identify service needs, an analysis of alternative service delivery options and recommendations to improve the financial viability of its programs.
 - (d)** Adoption of the following appropriation ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purpose Council District 1:
 - (1)** Establish an appropriation in the amount of \$25,000 to the Parks, Recreation and Neighborhood Services Department for the Citywide Pool Assessment Feasibility Study.
 - (2)** Decrease the appropriation for the Capital Maintenance Projects by \$25,000.
 - (e)** Adoption of the following appropriation ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purpose Council District 2:
 - (1)** Establish an appropriation in the amount of \$25,000 to the Parks, Recreation and Neighborhood Services Department for the Citywide Pool Assessment Feasibility Study.
 - (2)** Decrease the appropriation for the Capital Maintenance Projects by \$25,000.
 - (f)** Adoption of the following appropriation ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purpose Council District 3:
 - (1)** Establish an appropriation in the amount of \$25,000 to the Parks, Recreation and Neighborhood Services Department for the Citywide Pool Assessment Feasibility Study.
 - (2)** Decrease the appropriation for the Capital Maintenance Projects by \$25,000.
 - (g)** Adoption of the following appropriation ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purpose Council District 4:
 - (1)** Establish an appropriation in the amount of \$25,000 to the Parks, Recreation and Neighborhood Services Department for the Citywide Pool Assessment Feasibility Study.
 - (2)** Decrease the appropriation for the Capital Maintenance Projects by \$25,000.

Item continued on the next page

- 5.2 (h) Adoption of the following appropriation ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purpose Council District 5:
- (1) Establish an appropriation in the amount of \$25,000 to the Parks, Recreation and Neighborhood Services Department for the Citywide Pool Assessment Feasibility Study.
 - (2) Decrease the appropriation for the Capital Maintenance Projects by \$25,000.
- (i) Adoption of the following appropriation ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purpose Council District 6:
- (1) Establish an appropriation in the amount of \$25,000 to the Parks, Recreation and Neighborhood Services Department for the Citywide Pool Assessment Feasibility Study.
 - (2) Decrease the appropriation for the Capital Maintenance Projects by \$25,000.
- (j) Adoption of the following appropriation ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purpose Council District 7:
- (1) Establish an appropriation in the amount of \$25,000 to the Parks, Recreation and Neighborhood Services Department for the Citywide Pool Assessment Feasibility Study.
 - (2) Decrease the appropriation for the Capital Maintenance Projects by \$25,000.
- (k) Adoption of the following appropriation ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purpose Council District 8:
- (1) Establish an appropriation in the amount of \$25,000 to the Parks, Recreation and Neighborhood Services Department for the Citywide Pool Assessment Feasibility Study.
 - (2) Decrease the appropriation for the Capital Maintenance Projects by \$25,000.
- (l) Adoption of the following appropriation ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purpose Council District 9:
- (1) Establish an appropriation in the amount of \$25,000 to the Parks, Recreation and Neighborhood Services Department for the Citywide Pool Assessment Feasibility Study.
 - (2) Decrease the appropriation for the Capital Maintenance Projects by \$25,000.

Item continued on the next page

- 5.2 (m) **Adoption of the following appropriation ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purpose Council District 10:**
- (1) **Establish an appropriation in the amount of \$25,000 to the Parks, Recreation and Neighborhood Services Department for the Citywide Pool Assessment Feasibility Study.**
 - (2) **Decrease the appropriation for the Capital Maintenance Projects by \$25,000.**

CEQA: Not a Project. SNI: Greater Gardner, Mayfair, 13th Street. (Parks, Recreation and Neighborhood Services/City Manager's Office)

(Rules Committee deferral 9/14/05)

(Deferred from 9/27/05 – Item 5.3)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley and Budget Director Larry Lisenbee, dated September 20, 2005, recommending approval of the report, approval to keep 4 pools open, direction to administration, and adoption of all appropriation ordinance amendments and one resolution.

Director of Parks, Recreation and Neighborhood Services Sara Hensley presented the report and responded to numerous questions from the Council.

Public Comment: John Hoskins, and Rudy Martinez spoke against the closure of pools. Cathy Brandhorst voice concerns about lawsuits.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Pyle and carried unanimously, the report was accepted, approval to keep the four pools open was authorized, and Resolution No. 72928, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute One or More Consultant Agreements to Conduct a Strategic Planning Process for its Aquatic Program in an Amount Not To Exceed \$250,000"; Ordinance No. 27565, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #1 Fund for the Citywide Pool Assessment Feasibility Study; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; Ordinance No. 27566, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #2 Fund for the Citywide Pool Assessment Feasibility Study; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; Ordinance No. 27567, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #3 Fund for the Citywide Pool Assessment Feasibility Study; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; Ordinance No. 27568 entitled: "An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate

5.2 (Cont'd.)

Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #4 Fund for the Citywide Pool Assessment Feasibility Study; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”; Ordinance No. 27569 entitled: “An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #5 Fund for the Citywide Pool Assessment Feasibility Study; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”; Ordinance No. 27570 entitled: “An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #6 Fund for the Citywide Pool Assessment Feasibility Study; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”; Ordinance No. 27571 entitled: “An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #7 Fund for the Citywide Pool Assessment Feasibility Study; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”; Ordinance No. 27572 entitled: “An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #8 Fund for the Citywide Pool Assessment Feasibility Study; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”; Ordinance No. 27573 entitled: “An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #9 Fund for the Citywide Pool Assessment Feasibility Study; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”; Ordinance No. 27574 entitled: “An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #10 Fund for the Citywide Pool Assessment Feasibility Study; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, were adopted, with Staff and Consultant directed to: (1) Work closely with the Disability Advisory Commission (DAC). (2) Collaborate with academic institutions, including high schools, community colleges and universities. (3) Work with the Police Department to address safety and gang issues. (4) Examine the proximity of swimming pools to certain neighborhoods. (5) Provide a menu of options for Council consideration. (11-0)

TRANSPORTATION & AVIATION SERVICES

6.1 Report of the Building Better Transportation Committee – September 12, 2005 Council Member Campos, Chair

Documents Filed: The Building Better Transportation Committee Report dated September 12, 2005.

- (a) Expansion and Improvement of Transit and Transportation Systems.
 - (1) Discussion of Local Transportation Funding Needs and Strategies
Attachment: Memorandum from Director of Transportation James Helmer, dated September 1, 2005, transmitting the report.

The Committee accepted the report with Staff directed to return within the next six month work plan cycle.

- (2) Progress Report on the Proposed Electronic Transportation Development Center. Attachment: Memorandum from Director of Transportation James Helmer and Deputy Executive Director Redevelopment Agency John Weis, dated August 31, 2005, transmitting report.

The Committee accepted the report.

- (b) Traffic Relief/Safe Streets
No items.

- (c) Supporting Smart Growth
 - (1) Post Event Report on San José Grand Prix Traffic and Parking Management. Attachment: Memorandum from Director of Transportation James Helmer and Police Chief Robert Davis, dated August 31, 2005, transmitting the report.

The Committee accepted the report with Staff directed to return to the October 4, 2005 Council Meeting with a short presentation on the successes and recognize the efforts of Staff for the Inaugural San José Grand Prix.

- (d) Regional Relationships/Funding/Policy
No items.

- (e) Oral Petitions
There were none presented.

**6.1 Report of the Building Better Transportation Committee – September 12, 2005
Council Member Campos, Chair (Cont'd.)**

(f) Adjournment

The meeting was adjourned at 3:18 p.m.
(Rules Committee deferral 9/14/05)
(Deferred from 9/27/05 – Item 6.1)

Action: Upon motion by Council Member Campos, seconded by Council Member Williams and carried unanimously, the Building Better Transportation Committee Report and the actions of September 12, 2005, were accepted. (11-0)

6.2 (a) Direct the Administration to conduct a more thorough analysis of the recommendations developed at the recent airport/airline workshop and provide a status report, with recommendations, at the November 15, 2005 Council Meeting.

(b) Place a moratorium on bidding projects related to the development and implementation of the North Concourse for a period of 45 calendar days.

CEQA: Resolution Nos. 67380 and 71451, PP05-183. (Airport)

Documents Filed: (1) Memorandum from Director of Aviation William Sherry, dated September 30, 2005, recommending approval of the Staff recommendation as stated above. (2) Letter from the City of San José Airline Liaison Office, dated September 29, 2005, regarding the Staff recommendation.

Director of Aviation William Sherry presented the Staff recommendations.

A short discussion followed.

Public Comment: Dan Ryan, San José Chamber of Commerce, Steve Holt, American Airlines, and Kathy Smith, Alaska Airlines, spoke in support of the Staff recommendation.

Action: Upon motion by Council Member Reed, seconded by Council Member Pyle and carried unanimously, the actions were approved. (11-0)

**6.3 Approval to reject all bids for the Norman Y. Mineta San José International Airport- USO/Parking Revenue Control Modular Offices (Revised) contract.
CEQA: Resolutions No. 67380 and 71451, PP 05-075. (Airport)
(Deferred from 9/27/05 – Item 6.2)**

Action: Deferred to October 18, 2005.

ENVIRONMENTAL & UTILITY SERVICES

7.1 Public Hearing and adoption of a resolution vacating a portion of the Light and Air Easement that lies within Lot 23 of Tract No. 703, located at 2103 Emory Street. CEQA: Exempt, File No. 3-16872. Council District 6. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated September 14, 2005, recommending adoption of a resolution.

Public Comment: Mayor Gonzales opened the Public Hearing. Cathy Brandhorst spoke off topic. Mayor Gonzales closed the Public Hearing.

Action: Upon motion by Council Member Yeager, seconded by Council Member LeZotte and carried unanimously, Resolution No. 72929, entitled: "A Resolution of the Council of the City of San José Vacating a Portion of the Light and Air Easement Lying Within Lot 23 of Tract 703 (2103 Emory Street)", was adopted. (10-0-1. Absent: Reed.)

7.2 Acceptance of the interim status report and schedule on potential three-year extensions of the terms of the Recycle Plus agreements. CEQA: Negative Declaration, PP92-05-98. (Environmental Services)

Documents Filed: Memorandum from Acting Director Environmental Services John Stufflebean, dated September 27, 2005, recommending acceptance of the report.

Council questions to Director of Environmental Services John Stufflebean ensued.

Public Comment: Ross Signorino provided suggestions for monitoring recycling. William Garbett complained that in 14 years, he has not had his garbage picked up and urged no renewal.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Yeager and carried unanimously, the Interim Status Report was accepted, with Staff directed to: (1) Provide copies of all characterization studies to Council. (2) Obtain feedback from the contractors' outstanding issues. (3) Provide more information about non-performance elements of the contracts. (11-0)

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/ Units</u>	<u>Type</u>	<u>Proposed Decision</u>
9611	Southerly terminus of Basking Ridge Ave., Easterly of US 101	2	Lennar	213 Unit Homes	SFDR	Approve

OPEN FORUM

- (1) Mark Trout voiced his own religious point of view.
- (2) Robert Algar spoke about personal matters.
- (3) Ross Signorino mentioned he was sorry he was not able to participate in the "Walk for Domestic Violence".

ADJOURNMENT

The afternoon Council Session adjourned at 4:42 p.m.

RECESS/RECONVENE

The City Council recessed at 4:52 p.m. from the Joint City Council/Redevelopment Agency Board, and reconvened at 7:01 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, LeZotte, Nguyen, Pyle, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

CEREMONIAL ITEMS

1.2 Presentation of a commendation to the San José/Silicon Valley NAACP for receiving for a second year in a row, two 2005 Thalheimer Awards for being the most outstanding branch of its size. (Cortese)

Action: Mayor Gonzales and Council Member Cortese recognized and commended the San José/Silicon Valley NAACP for their outstanding achievements and well earned recognition.

1.6 Presentation of a proclamation declaring October 16th, as Indian Business & Professional Women Day in San José. (LeZotte) (Rules Committee referral 9/28/05)

Action: Mayor Gonzales and Council Member LeZotte declared October 16, 2005 as “Indian Business and Professional Women Day” celebrating their success in the business environment.

PUBLIC HEARINGS

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Vice Mayor Chavez, seconded by Council Member Chirco, and carried unanimously, the below noted continuances were granted. (11-0.)

11.1 Public Hearings on Consent Calendar

Upon motion by Council Member Pyle seconded by Council Member Reed, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0.)

- 11.1 (a) Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning request from R-2 Two Family Residence District to A(PD) Planned Development to allow two single family detached residences in a flag lot configuration on a 0.28 gross acre site, located on the north side of Lincoln Court approximately 200 feet west of Terra Bella Avenue (1115 Lincoln Court (DCL LLL, Owner). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). CEQA: Exempt.
PDC05-067 - District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC05-067, dated September 14, 2005, recommending approval on the subject property. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated September 15, 2005, transmitting the Planning Commission recommendation of the subject property. (3) Proof of Publication of Notice of Public Hearing, executed on September 2, 2005, submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the public hearing. There was no testimony from the floor. Mayor Gonzales closed the public hearing.

Action: The recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 27575, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Lincoln Court Approximately 200 Feet West of Lincoln Avenue (1115 Lincoln Court) to A(PD) Planned Development Zoning District”, was passed for publication. (11-0)

- (b) Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning from CO Commercial Office Zoning District to A(PD) Planned Development Zoning District and associated Planned Development Permit to allow relocation of one single-family detached Victorian house on a 0.13 gross acre site, located on the north side of George Street, approximately 140’ easterly of Guadalupe Parkway (175 George St.) (Neighborhood Housing Services Silicon Valley, Tony Batista, Maria R. Gudino, Owner). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). CEQA: Exempt.
PDC05-072 & PD05-049 - District 3**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC05-072 & PD05-049, dated September 8, 2005, recommending approval on the subject property. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated September 15, 2005, transmitting the Planning Commission recommendation of the subject property. (3) Proof of Publication of Notice of Public Hearing, executed on September 2, 2005, submitted by the City Clerk.

11.1 (b) (Cont'd.)

Public Comment: Mayor Gonzales opened the public hearing. There was no testimony from the floor. Mayor Gonzales closed the public hearing.

Action: The recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 27576, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of George Street, Approximately 140 Feet Easterly of Guadalupe Parkway (175 George Street) to A(PD) Planned Development Zoning District", was passed for publication. (11-0)

- (c) Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning from A(PD) Planned Development District to A(PD) Planned Development District to allow minor revisions (including rear and front setbacks and number of stories) to the development standards of a previously approved 12 unit single family attached project on a 0.54 gross acre site, located on the southeast corner of Alum Rock Avenue and McCreery Avenue (Tierra Encantada LP, Owner). SNI: Mayfair. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). CEQA: Negative Declaration. PDC05-056 - District 5**

Action: Continued to October 18, 2005.

- (d) Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning to rezone from R-1-8 Single Family Residence Zoning District to A(PD) Planned Development Zoning District to allow substandard lot sizes for two existing single family residences on a 0.2 gross acre site, located on the west side of Myrtle Street, approximately 200 feet northerly of West Hedding Street (927 Myrtle Street) (Judy C. McDowell, Trustee, Nguyen Nguyen Hoang and Hang Le, Owner). CEQA: Exempt. PDC05-074 – District 6**

Action: Continued to October 18, 2005.

- 11.2 Public Hearing on and consideration of approval of an ordinance on Rezoning from CG Commercial General Zoning District to DC Downtown Primary Commercial Rezoning to allow commercial uses on a 0.09 gross acre site, located at/on the northwest corner of N. 2nd Street and Devine Street (257 N 2nd St.) (Daryl Fazekas, Owner). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2). CEQA: Resolution No. 65459. C04-067 - District 3
(Continued from 8/16/05 – Item 11.3 and 9/13/05 – Item 11.2)**

11.2 (Cont'd.)

Documents Filed: (1) Memorandum from Vice Mayor Chavez, dated October 4, 2005, recommending approval of the Staff recommendation with clarifications. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C04-067, dated May 2, 2005, recommending approval on the subject property. (3) Memorandum from Secretary of Planning Commission Stephen Haase, dated July 18, 2005, transmitting the Planning Commission recommendation of the subject property. (4) Supplemental memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated September 28, 2005, transmitting additional information.

Mayor Gonzales abstained because he lives in close proximity to the subject property.

Vice Mayor Chavez moved approved of the Staff recommendation and her memorandum dated October 4, 2005. Council Member Campos seconded the motion.

Public Comment: Vice Mayor Chavez opened the public hearing. Hugo Werle raised safety issues pertaining to the rezoning and the Germania Restaurant. Director of Planning, Building and Code Enforcement Stephen Haase noted that the safety issues will be addressed during the permit process. Ken Pastrof, representing the Owner, spoke in support of the rezoning. Vice Mayor Chavez closed the public hearing.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 27577, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Northwest Corner of North 2nd Street and Devine Street (257 North 2nd Street) to DC Downtown Primary Commercial Zoning District", was passed for publication. (10-0-0-1. Disqualified: Gonzales.)

- 11.3 Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning from CN Commercial Neighborhood and CG(PD) Planned Development Zoning Districts to CN(PD) to allow commercial, automobile dealership and parking structure uses on a 3.1 gross acre site (320 Ardis Avenue) and from R-1-8 to R-1-8 (PD) Planned Development Zoning Districts to allow parking and residential uses on a 0.16 gross acre site (333 South Henry Avenue) located at the south side of Stevens Creek Boulevard between Ardis and South Henry Avenues (Behel, Paris, Gesell, Calabro, Jozovich, Battaglia, Fenley, Mattos, Owners). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2).
PDC03-053 - District 1**

11.3 (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC03-053, dated September 21, 2005, recommending approval on the subject property. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated September 22, 2005, and September 29, 2005, transmitting the Planning Commission recommendation of the subject property. (3) Proofs of Publications of Notices of Public Hearing, executed on September 2, 2005, and September 16, 2005, submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the public hearing. Cathy Brandhorst spoke off topic. Mayor Gonzales closed the public hearing.

Discussion: Council Member LeZotte expressed concerns about the height of the retaining walls and suggested landscaping be required to cover the walls. She also expressed concerns about the use of the existing parking lot for employee parking. Director of Planning, Building and Code Enforcement Stephen Haase noted that the applicant, through the permitting process, will be allowed to use the residential lot for car dealership parking and added that any change in ownership will cause that stipulation to go away (lot reverts to residential lot).

Council Member LeZotte added Staff direction to discourage employee parking on the street, as well as any inventory of cars.

Action: Upon motion by Council Member LeZotte, seconded by Council Member Reed and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 27578, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Approximately 3.1 Acres in Size Situated at the South Side of Stevens Creek Boulevard Between Ardis and South Henry Avenue (In and Around Ardis Avenue) to CN(PD) Planned Development Zoning District and Rezoning Certain Additional Real Property Situated on the South Side of Stevens Creek Boulevard Along Henry Avenue (333 South Henry Avenue) to R-1-8 (PD) Planned Development Zoning District", was passed for publication. (11-0)

- 11.4 Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning from CN Commercial Neighborhood and R-1-8 Single Family Residence Zoning Districts to A(PD) Planned Development Zoning District to allow the demolition of three single family detached residences and allow commercial, automobile dealership and parking uses on a 1.46 gross acre site located at the southwest corner of Ardis Avenue and Stevens Creek Boulevard (3370 Stevens Creek Boulevard). (Homara Hooshang and Manizheh, Trustee, Owners. CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). PDC05-028 - District 1**

11.4 (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC05-028, dated September 28, 2005, recommending approval on the subject property. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated September 22, 2005, transmitting the Planning Commission recommendation of the subject property. (3) Proofs of Publications of Notices of Public Hearing, executed on September 2, 2005, and September 16, 2005, submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the public hearing. There was no testimony from the floor. Mayor Gonzales closed the public hearing.

Action: Upon motion by Council Member LeZotte, seconded by Council Member Chirco and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 27579, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southwest Corner of Ardis Avenue and Stevens Creek Boulevard (3370 Stevens Creek Boulevard) to A(PD) Planned Development Zoning District", was passed for publication. (11-0)

11.5 **Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning request from R-1-8 Single Family Residence District to A(PD) Planned Development to allow four single family detached residences on a 0.64 gross acre site, located on the west side of Curtiss Avenue, approximately 350 feet southerly of Willow Street (1163 Curtiss Avenue) (Willowshire LLC, Owner). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1) with modifications:**

- (a) **Change the maximum number of stories for the western-most house from two stories to one.**
- (b) **Modify the setbacks for the western-most house to require a 5-foot setback from the south property line and a 20-foot setback from the west property line for the residence and a 5-foot setback for an attached or detached single-story garage.**

CEQA: Exempt.

PDC05-031 - District 6

Documents Filed: Memorandum from Council Member Yeager, dated October 4, 2005, requesting a two week deferral of this rezoning item.

Action: Continued to October 18, 2005.

COMMUNITY AND ECONOMIC DEVELOPMENT

4.3 Approval of an ordinance amending Title 20 of the San José Municipal Code:

- (a) To amend land use regulations pertaining to off-sale alcoholic beverages, to set forth elements for consideration in a liquor license exception process, to amend the locational criteria for off-sale of alcoholic beverages uses, and to distinguish off-sale of beer and wine uses from off-sale of all types of alcohol uses; and,
- (b) To repeal the provisions contained in the Zoning Code pertaining to gasoline service station combined uses.

Planning Commission recommends approval; (5-1-1; Dhillon opposed, Pham absent) with direction to examine: 1) an exception from the public convenience or necessity process for large retailers with no more than 5% shelf space devoted to alcohol sales and 2) exceptions for certain types of off-sale uses.

CEQA: Exempt.

Documents Filed: (1) Memorandum from Vice Mayor Chavez, and Council Members Campos, LeZotte and Williams, dated October 4, 2005, recommending approval of the ordinance. (2) Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated September 29, 2005, transmitting the Planning Commission recommendation. (3) Supplemental memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated September 30, 2005, providing updated police statistics. (4) Proof of Publication of Notice of Public Hearing, executed on August 11, 2005, submitted by the City Clerk. (5) Proof of Publication of Notice of Public Hearing, executed on October 11, 2005, submitted by the City Clerk. (6) Six correspondences from the public.

Council Member Reed abstained because of potential conflict of interest may exist due to an Attorney/Client relationship. Council Member Cortese abstained because of a potential conflict of interest due to a business relationship with a service station property owner.

Director of Planning, Building and Code Enforcement Stephen Haase presented an overview of the issues pertaining to this item.

Motion: Vice Mayor Chavez moved approval of the Staff recommendation, not including the Planning Commission's addition, but with the addition of the memorandum she cosigned with Council Members Campos, LeZotte and Williams. Council Member Campos seconded the motion.

Public Comment: Speaking in opposition were: Don Gagliardi, Lisa Jensen, Autumn Gutierrez, Hank Rullhausen, Anthony Traina, Cahalan Square Shopping Center, Ed Rast, Sister Miriam Fahey, Ted Johnson and Omar Torres.

Speaking in support were: Manraj Natt, Angela Storey, David Joines, Bill Feulner, Haswfinder Sohal, Nick Goyal, Gerald Cummings, Robinson Oil Corporation, Bill Currie, Matt Rezvani, BP America, Matt Lonner, Chevron, Timothy James, California Grocers Association, Judy Purrington and Bob Dulci.

Vice Mayor Chavez amended her motion to include the Strong Neighborhood Initiative areas in the target law enforcement area; requested that Staff look at opportunities for increasing penalties for the illegal sale of alcohol to minors, and lower the trigger for legal nonconforming establishments; enhance the focus on single sales of alcohol, and strengthen the Conditional Use Permit process to include violations for trash and noise issues, which would allow a Code Enforcement Officer to begin the enforcement process earlier. Council Member Campos accepted the amendment to the motion.

Council Member Nguyen remarked she would not be supporting the ordinance because it would create additional public safety issues.

Council Member Williams requested that Staff review the process in one year to assess progress be added to the motion. Vice Mayor Chavez and Council Member Campos accepted the amendment.

Council Member LeZotte urged Staff to follow the direction in the memorandum she cosigned with Vice Mayor Chavez, and Council Members Campos and Williams, which adds protection to the neighborhoods, and the areas where there is overconcentration, including irresponsible owners selling to minors.

Vice Mayor Chavez provided amendments to her motion, outlined in the “Action” below.

Action: On a call for the question, the motion carried, Ordinance No. 27564, entitled: “An Ordinance of the City of San José Repealing the Provisions Set Forth in Part 7 of Chapter 20.80 of Title 20 of the San José Municipal Code Pertaining to Gasoline Service Station Combined Uses; Amending Part 11 of Chapter 20.80 of Title 20 of the San José Municipal Code to Amend the Locational Criteria for Uses Involving the Off Sale of Alcoholic Beverages; Amending Table 20-90 Within Section 20.40.100 of Chapter 20.40 and Amending Table 20-140 Within Section 20.70.100 of Chapter 20.70, All Within Title 20 of the San José Municipal Code, To Distinguish Off Sale of Beer and/or Wine Uses from Off Sale of All Types of Alcoholic Beverages Uses, and Adding a New Chapter 6.84 to Title 6 of the San José Municipal Code to Set Forth Considerations When Making a Determination of Public Convenience of Necessity Under a California Sate Liquor License Application”, was passed for publication, with the following direction to Staff: (1) Add Public parks to the list of “proposed uses would not be located within 500 feet”. (2) Bring forward amendments at the 11/15/05 Council Meeting to be considered in conjunction with the second reading that incorporate the following changes: (a) Examine appropriate locations and possible other land use regulations pertaining to sales of fortified wines/liquors and single can/bottle sales, in addition to the distilled liquor restrictions proposed by Staff, and direct Staff to establish effective coordination with ABC on appropriate conditions within ABC permits related to this and other health and safety issues. (b) Examine and provide a recommendation on the establishment of operating regulations for off sale establishments that create minimum standards of

4.3 (Cont'd.)

operation, including hours of operation, maintenance of the premises, minimum lighting standards, provision of trash receptacles, location for sale of “adult only” video recordings, locations of on premises advertising and location/security of alcohol, etc. (c) Examine and report back on methods to administratively fine and/or remove the right to sell alcohol by businesses found in non-compliance with their Conditional Use Permits in a timely manner, and include appropriate ordinance changes if any, needed to implement the recommendation in the amendments brought back to Council. (d) Provide recommendation on implementing a program similar to the City’s Multiple Dwelling Fee to ensure adequate enforcement of off sale alcohol establishments and bring back for Council consideration any related ordinance or resolution amendments necessary to implement staff recommendation. (3) Include the Strong Neighborhood Initiative areas in the target law enforcement area. (4) Look at opportunities for increasing penalties for the illegal sale of alcohol to minors. (5) Lower the trigger for legal nonconforming establishments. (6) Enhance the focus on single sales of alcohol. (7) Strengthen the Conditional Use Permit process to include violations for trash and noise issues, which would allow a Code Enforcement Officer to begin the enforcement process earlier. (8) Review the process in one year to assess progress. The Planning Commission’s addition was not approved. (8-1-0-2. Noes: Nguyen. Disqualified: Cortese, Reed.)

NEIGHBORHOOD SERVICES

- 5.3 Recommendation of the Parks and Recreation Commission to name a new neighborhood center located at 1200 Blossom Hill Road as the “Pat Dando Hoffman/Via-Monte Neighborhood Center”. (City Clerk)
(Rules Committee referral 9/21/05)
Heard in the Evening.**

Documents Filed: Memorandum from City Clerk Lee Price, dated September 22, 2005, recommending naming a new neighborhood center.

Public Comment: Angela Storey, Hoffman/Via Monte NAC, spoke in support of the renaming of the neighborhood center.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Chavez and carried unanimously, name of “The Pat Dando Hoffman/Via Monte Neighborhood Center”, was approved. (9-0-2. Absent: Cortese, Reed.)

OPEN FORUM

- (1) Mark Trout voiced his own religious point of view.

ADJOURNMENT

The Council of the City of San José adjourned at 9:14 p.m. in memory of District 1 resident, Francis Consalvi, who passed away on September 27. She was instrumental in helping to found the Cypress Senior Center in West San José and was a passionate volunteer and advocate of senior programs and issues for over 22 years.

RON GONZALES, MAYOR

ATTEST:

LEE PRICE, CMC, CITY CLERK

smd/10-4-05min

8. JOINT REDEVELOPMENT AGENCY ITEM

The Joint Redevelopment Agency Board convened at 4:46 p.m. to consider Items 8.1 and 8.2 in a Joint Session.

- 8.1 Approval of a Cooperation Agreement between the City of San Jose and the Redevelopment Agency providing for the Agency's transfer of the interim San Jose McEnery Convention Center South Hall building to the City of San Jose and providing for the City's use of the land generally lying between Balbach Street and Viola Street and Market Street and Almaden Avenue. CEQA: Mitigated Negative Declaration, File Number CP04-028 [MONTEREY CORRIDOR]**

Documents Filed: Memorandum from Redevelopment Agency Director Harry S. Mavrogenes and City Manager Del Borgsdorf , dated October 4, 2005, recommending approval of the agreement.

Public Comment: William Garbett spoke in opposition to the Staff recommendation.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Pyle, and carried unanimously, the Cooperation Agreement was approved, with Staff to provide a description of the pending improvements for the perimeter of the Convention Center South Hall (Balbach Street) so that the Market/Almaden Neighborhood community can be informed. (11-0)

- 8.2 City Council and Redevelopment Agency Board approval of a Cooperation Agreement specifying the terms and conditions for the loan and employment, for administrative services, of an Agency employee to the City on a temporary basis.**

Documents Filed: Memorandum from Redevelopment Agency Director Harry S. Mavrogenes, dated October 4, 2005, recommending approval of the agreement.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Reed and carried unanimously, the Cooperation Agreement was approved. (11-0)

ADJOURNMENT

The Council of the City of San José, and Redevelopment Agency Board adjourned at 4:52 p.m.